

Introduced by Senators Sher and OrtizFebruary 26, 1999

An act to add Section 1094.8 to the Code of Civil Procedure, relating to judicial review, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 1165, as introduced, Sher. Expedited judicial review.

Existing law provides for judicial review of decisions by a local public agency regarding the issuance, revocation, suspension, or denial of a business permit.

This bill would set forth an expedited procedure for judicial review of decisions by a local public agency regarding the issuance, revocation, suspension, or denial of a business permit involving expressive conduct protected by the First Amendment to the United States Constitution, as specified.

The bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1094.8 is added to the Code of
2 Civil Procedure, to read:
3 1094.8. (a) Notwithstanding anything to the contrary
4 in this chapter, an action or proceeding to review the
5 issuance, revocation, suspension, or denial of a permit or
6 other entitlement for expressive conduct protected by



1 the First Amendment to the United States Constitution
2 shall be conducted in accordance with subdivision (d).

3 (b) For purposes of this section, the following
4 definitions shall apply:

5 (1) The terms “permit” and “entitlement” are used
6 interchangeably.

7 (2) The term “permit applicant” means both an
8 applicant for a permit and a permitholder.

9 (c) A public agency may, if it so chooses, designate the
10 permits or entitlements to which this section applies by
11 adopting an ordinance or resolution which contains a
12 specific listing or other description of the permits or
13 entitlements issued by the public agency which are
14 eligible for expedited judicial review pursuant to this
15 section because the permits regulate expression
16 protected by the First Amendment to the United States
17 Constitution.

18 (d) The procedure set forth in this subdivision, when
19 applicable, shall supersede anything to the contrary set
20 forth in this chapter.

21 (1) Within five court days after receipt of written
22 notification from a permit applicant that the permit
23 applicant will seek judicial review of a public agency’s
24 action on the permit, the public agency shall prepare,
25 certify, and make available the administrative record to
26 the permit applicant.

27 (2) Either the public agency or the permit applicant
28 may bring an action in accordance with the procedure set
29 forth in this section.

30 (3) If the permit applicant brings this action, the
31 action shall be a petition for writ of mandate pursuant to
32 Section 1085 or 1094.5, as appropriate.

33 (4) If the public agency brings the action, the action
34 shall be a petition for review of the public agency’s
35 decision with respect to the permit and for a
36 determination that no writ of mandate pursuant to either
37 Section 1085 or 1094.5, as appropriate, shall be issued by
38 the court. If the court determines that the public agency’s
39 decision with respect to the permit was not lawful, the
40 court shall then issue a judgment ordering the issuance of



1 a writ of mandate pursuant to Section 1085 or 1094.5, as
2 appropriate.

3 (5) The party bringing the action pursuant to this
4 section shall file and serve the petition on the respondent
5 no later than seven court days following the public
6 agency's final decision on the permit. The title page of the
7 petition shall contain the following language in 18-point
8 type:

9 "ATTENTION: THIS MATTER IS ENTITLED TO
10 PRIORITY AND SUBJECT TO THE EXPEDITED
11 HEARING AND REVIEW PROCEDURES
12 CONTAINED IN SECTION 1094.8 OF THE CODE OF
13 CIVIL PROCEDURE."

14 (6) The clerk of the court shall set a hearing for review
15 of the petition no later than 25 calendar days from the
16 date the petition is filed. Moving, opposition, and reply
17 papers shall be filed as provided in the California Rules of
18 Court. The petitioner shall lodge the administrative
19 record with the court no later than five days in advance
20 of the hearing date.

21 (7) Following the conclusion of the hearing, the court
22 shall render its decision in an expeditious manner
23 consistent with constitutional requirements in view of the
24 particular facts and circumstances. In no event shall the
25 decision be rendered later than 20 days after the hearing
26 or 60 days after the public agency's decision on the permit
27 application, whichever is earlier.

28 (e) If the presiding judge of the court in which the
29 action is filed determines that, as a result of either the
30 press of other court business or other factors, the court
31 will be unable to meet any one or more of the deadlines
32 provided within this section, the presiding judge shall
33 request the temporary assignment of a judicial officer to
34 hear the petition and render a decision within the time
35 limits contained herein, pursuant to Section 68543.8 of the
36 Government Code. Given the short time period involved,
37 the request shall be entitled to priority.

38 (f) In any action challenging the issuance, revocation,
39 suspension, or denial of a permit or entitlement, the

1 parties to the action shall be permitted to jointly waive
2 the time limits provided for herein.

3 SEC. 2. This act is an urgency statute necessary for the
4 immediate preservation of the public peace, health, or
5 safety within the meaning of Article IV of the
6 Constitution and shall go into immediate effect. The facts
7 constituting the necessity are:

8 In order for a judicial action or proceeding reviewing
9 the issuance, revocation, suspension, or denial of a permit
10 or other entitlement for expressive conduct protected by
11 the First Amendment to the United States Constitution
12 to proceed to hearing and have a decision rendered in an
13 expeditious manner consistent with constitutional
14 requirements in view of the holding in *Baby Tam & Co.,*
15 *Inc. v. City of Las Vegas* (1998) 154 F.2d 1097, it is
16 necessary that this act take effect immediately.

